

Supreme Court, U. S.

FILED

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MICHAEL RODAK, JR., CLERK

IN THE
Supreme Court of the United States

MAY TERM, 1979

No.

78-1843

WALLACE J. SCHONWALD,

Petitioner,

v.

STATE OF NEW JERSEY,

Respondent.

**PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF NEW JERSEY**

MORTON BERGER
13 Eastbourne Drive
Spring Valley, New York 10977
Attorney for Petitioner

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IN THE
Supreme Court of the United States
MAY TERM, 1979

No.

WALLACE J. SCHONWALD, *Petitioner,*
v.
STATE OF NEW JERSEY, *Respondent.*

**PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF NEW JERSEY**

Undersigned Counsel, on behalf of the Petitioner, Wallace J. Schonwald, petitions for a Writ of Certiorari to review the judgment of the Appellate Division of the Superior Court of New Jersey in this case entered on December 7, 1978, which affirmed the judgment of the Superior Court of New Jersey, Law Division, Morris County, convicting the Petitioner of one Count of Misconduct in Office in violation of N.J.S. 2A: 85-1 and one Count of Solicitation of a bribe in violation of N.J.S. 2A: 93-6.

A petition for rehearing and determination en banc was made on December 14, 1978, which petition was denied on December 21, 1978. On March 13, 1979, the Supreme Court of New Jersey denied a timely petition for certification. Petitioner surrendered on April 2, 1979.

Opinions Below

The opinion of the Appellate Division of the Superior Court of New Jersey (Pet. App. A, *Infra*, p. 1a) is not reported. The decision of the Appellate Division of the Superior Court of New Jersey denying Petitioner's petition for a rehearing and determination en banc (Pet. App. B, *Infra*, p. 3a) is not reported. The decision of the Supreme Court of the State of New Jersey denying Petitioner's petition for certification (Pet. App. C, *Infra*, p.) is not reported.

Jurisdiction

The judgment of the Appellate Division of the Superior Court of New Jersey was entered on December 7, 1978 (Pet. App. A, *Infra*, pp. 1a-2a). On December 21, 1978, the Appellate Division denied a timely petition for rehearing and determination en banc (Pet. App. B, *Infra*, p. 3a). On March 13, 1979 the Supreme Court of the State of New Jersey denied a timely petition for Certification (Pet. App. C, *Infra*, p. 4a).

The jurisdiction of this Court is invoked under *Title 28 United States Code, Section 1257 (3)*.

Question Presented

Whether the Petitioner's privilege against self-incrimination was violated by the trial court's denial of Petitioner's motion to suppress certain extra judicial statements made by him in response to State Agents declarations directed to him while he was detained at Police Headquarters by State Police and Agents of the Attorney General's Office for the purpose of executing a search of his person and property pursuant to a search warrant as the Petitioner was not given his *Miranda* warnings at any time prior to the conclusion of the search.

Statement of Case

The petitioner was a Civil Service employee who was employed as an Engineer by the Department of Transportation of the State of New Jersey. He was charged in a two count indictment with the crimes of Misconduct in Office in violation of *N.J.S.A. 2A: 85-1* and with solicitation of a bribe in violation of *N.J.S.A. 2A: 93-6*.

In substance the indictment alleges that the Petitioner had solicited and received certain money from Louis Ripa and the engineering firm of Porter and Ripa Associates in exchange for favorable treatment promised to Louis Ripa by Petitioner in his capacity as an employee of the Department of Transportation of the State of New Jersey.

Louis Ripa reported the alleged solicitation by Petitioner to the office of the Attorney General on or about June 4, 1976 and thereafter, from June 11, 1976 to and including July 15, 1976, the Petitioner was the target of a criminal investigation and was under surveillance by agents of the State Attorney General.

During the period from June 11, 1976, the State recorded six conversations between the Petitioner and Louis Ripa and had arranged to have Louis Ripa pay the Petitioner \$3,500.00 on June 18, 1976 and \$14,000.00 on July 15, 1976. The payment of \$14,000.00 was made by Louis Ripa to the Petitioner at the office of Porter and Ripa Associates on July 15, 1976. The entire transaction was recorded by State Agents who had supplied Louis Ripa with the money. On July 15, 1976, prior to the consummation of the alleged transaction, State agents had obtained a search warrant to search the Petitioner and his property and had reserved a room in Troop B Headquarters of the Morristown Police where the Petitioner was to be searched and interrogated. As Petitioner left the office of Porter and Ripa Associates his automobile was stopped by a uniformed policeman who directed him to proceed to

Troop B Headquarters where he was met by agents of the office of the Attorney General and other police officers. He was taken to a room in the police station where he was shown the search warrant and was detained for purposes of the search. It is uncontested that Petitioner was detained in a police dominated atmosphere for the purpose of being searched. It is uncontroverted that State agents made statements to the Petitioner while he was so detained and that it was expected by those agents that Petitioner would make a statement or statements in response. It is also uncontroverted that the Petitioner was not given his *Miranda* warnings or for that matter, any kind of warning prior to the State agents showing Petitioner the search warrant and their intentionally making statements to the Petitioner which resulted in answers given by the Petitioner. The Petitioner made a motion to suppress these statements and answers and after the Court conducted a suppression hearing, the motion was denied. The very statements and responses made by the Petitioner during the search were introduced in evidence by the State.

It is the contention of the Petitioner that the denial of his motion to suppress violated his constitutional privilege against self-incrimination as enunciated in the case of *Miranda v. United States*, 384, U.S. 436, 86 S. Ct. 1602 (1966) and its progeny.

It is the contention of the State that as the Petitioner was not formally arrested and was not interrogated in the conventional sense, it was unnecesssary to give him his *Miranda* warnings.

Argument in Support of Petition for Writ of Certiorari

It is uncontroverted that the Petitioner was detained and in custody during his search at Troop B Headquarters of

the Morristown Police. The contention of the State that it was not necessary to give the Petitioner his *Miranda* warnings during the search because he was not formally arrested is without merit. During the search the Petitioner was in custody. In *Miranda v. United States*, *Supra*, the Court stated:

"By custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of Action in any significant way" (Italics Supplied).

During the search, Petitioner was detained, in custody and deprived of his freedom of action in a significant way. It is clear that custody in the *Miranda* sense does not necessitate a formal arrest nor does it require physical restraint in a police station, nor the application of handcuffs and may occur in a suspect's home or a public place other than a police station. *Arozco v. Texas*, 394 U.S. 324, 89 S. Ct. 1095 (1969); *State v. Graves*, 60 N.J. 441 (1972); *State v. Seefeldt*, 51 N.J. 472 (1968).

Custody in the *Miranda* sense having been established, the remaining question is whether the Petitioner was interrogated. During the suppression hearing Deputy Attorney General Bozza testified that statements were made to the Petitioner during the search concerning the subject matter of the search and that he expected the Petitioner to respond to those statements and to his being shown the search warrant. The statements made by the Petitioner related to the subject matter of the investigation and were introduced in evidence against him during the trial. The Petitioner's statements were not volunteered or spontaneous but were the result of the impelling influences which were exerted by the agents to bring about the statements during a time he was in custody. It is implicit that interrogation in the concept of *Miranda* need not be of the

question and answer type. *State v. Godfrey*, 131 N.J. Supra 168 (1974). The principles set forth in *Miranda* cannot be circumvented by trickery or device calculated to obtain statements, admissions or confessions while avoiding the asking of direct questions. It is common knowledge that statements such as accusations can illicit responses more readily than interrogation in the ordinary sense.

The facts in this case present an important question of law of first impression. Law enforcement agencies and the Judiciary require guidelines to be established by this court with regard to procedures to be followed to protect an individual's privilege against self-incrimination during a search of his person pursuant to a search warrant. It is within the realm of an ordinary man's experience that an individual who is confronted with a search warrant will probably make some statement unless he is warned of the legal consequences of doing so.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

MORTON BERGER
13 Eastbourne Drive
Spring Valley, New York 10977
Phone: 914-425-6484
Attorney for Petitioner

Appendix A, Judgment, Superior Court of New Jersey Appellate Division.

NOT FOR PUBLICATION WITHOUT THE APPROVAL
OF THE COMMITTEE ON OPINIONS

A-4076-76

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

WALLACE J. SCHONWALD,

Defendant-Appellant.

Argued: November 28, 1978—Decided: Dec 7 1978

Before Judges Matthews, Kole and Milmed.

On appeal from Superior Court, Law Division, Morris County.

Mr. Morton Berger, a member of the New York Bar, argued the cause for appellant.

Ms. Anne C. Paskow, Deputy Attorney General, argued the cause for respondent (Mr. John J. Degnan, Attorney General of New Jersey, attorney).

PER CURIAM

Defendant was convicted by a jury of misconduct in office contrary to N.J.S.A. 2A:85-1 (count 1 of the indict-

*Appendix A, Judgment, Superior Court of New Jersey,
Appellate Division.*

ment) and solicitation of a bribe contrary to *N.J.S.A.* 2A:93-6 (count 2). He appeals.

Defendant raises the following contentions as grounds for reversal of his conviction:

1. The trial court erred in denying his motion to suppress statements made by him to agents of the State Police and the Attorney General.
2. The trial court erred in denying his request that he be permitted to place in evidence the results of a polygraph test taken by George Keller, a defense witness, at the request of the State and administered by a State Police officer.
3. Count 1 of the indictment, which alleges misconduct in office, is defective as it incorporates allegations which do not constitute the crime of misconduct in office.
4. With regard to count 1 of the indictment, the verdict is contrary to the weight of the evidence and is not supported by substantial evidence.
5. Count 2 of the indictment should have been dismissed because it is indefinite, ambiguous, and duplicitous.
6. With regard to count 2 of the indictment, the verdict is contrary to the weight of the evidence and is not supported by substantial evidence.
7. The refusal of the trial court to grant any part of his motion for a bill of particulars was an abuse of discretion.
8. The trial court erred by rejecting his offer of proof of prior consistent statements made by him.

*Appendix A, Judgment, Superior Court of New Jersey,
Appellate Division.*

We have carefully reviewed the record in the light of applicable law. We are satisfied that there is plainly no merit to any of the contentions advanced by defendant on this appeal. *R. 2:11-3(e)(2)*.

Affirmed.

A TRUE COPY
ELIZABETH McLAUGHLIN
Clerk

Appendix B, Order on Motions/Petitions.

SUPERIOR COURT OF NEW JERSEY

APPELLATE DIVISION

DOCKET No. A-4076-76

MOTION No. M-1576-78

BEFORE PART G

MATTHEWS

KOLE

MILMED

STATE OF NEW JERSEY

VS

WALLACE SCHONWALD

MOVING PAPERS FILED	DECEMBER 14, 1978
ANSWERING PAPERS FILED	
DATE SUBMITTED TO COURT	DECEMBER 18, 1978
DATE ARGUED	
DATE DECIDED	DECEMBER 21, 1978

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT,
IT IS HEREBY ORDERED AS FOLLOWS:

	GRANTED	DENIED	OTHER
MOTION FOR REHEARING in		X	
A-4076-76			

SUPPLEMENTAL:

I hereby certify that the foregoing is a true copy of the
original on file in my office.

ELIZABETH McLAUGHLIN
Clerk

FOR THE COURT:

(Illegible)

P.J.A.D.

WITNESS, THE HONORABLE ROBERT A. MATTHEWS, PRE-
SIDING JUDGE OF PART G, SUPERIOR COURT OF NEW JERSEY,
APPELLATE DIVISION, 21 DAY OF DECEMBER 1978.

ELIZABETH McLAUGHLIN
CLERK OF THE APPELLATE DIVISION

ORIGINAL FILED
DEC 21 1978
ELIZABETH McLAUGHLIN
Clerk

Appendix C, Order Denying Petition for Certification.

SUPREME COURT OF NEW JERSEY

C-509 SEPTEMBER TERM 1978

ON PETITION FOR CERTIFICATION

STATE OF NEW JERSEY,
Plaintiff-Respondent,
vs.

WALLACE J. SCHONWALD,
Defendant-Petitioner.

To Appellate Division, Superior Court:

A petition for certification having been submitted to
this Court, and the Court having considered the same,

It is hereupon ORDERED that the petition for certification
is denied with costs.

WITNESS, the Honorable Worrall F. Mountain, Presiding
Justice, at Trenton, this 13th day of March, 1979.

STEPHEN W. TOWNSEND
Clerk

FILED
MAR 13 1979
STEPHEN W. TOWNSEND
Clerk

A TRUE COPY

STEPHEN W. TOWNSEND
Clerk

Appendix D, Order on Motions/Petitions.**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION**

DOCKET No. A-4076-76
MOTION No. M-1575-78

BEFORE PART G

MATTHEWS
KOLE
MILMED

STATE OF NEW JERSEY

VS

WALLACE J. SCHONWALD

MOVING PAPERS FILED	DECEMBER 14, 1978
ANSWERING PAPERS FILED	DECEMBER 20, 1978
DATE SUBMITTED TO COURT	DECEMBER 18, 1978
DATE ARGUED	
DATE DECIDED	DECEMBER 21, 1978

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT,
IT IS HEREBY ORDERED AS FOLLOWS:

	GRANTED	DENIED	OTHER
MOTION FOR CONTINUANCE	X		
OF BAIL AND STAY OF			
MANDATE PENDING RE-			
HEARING, ETC.			

Appendix D, Order on Motions/Petitions.

SUPPLEMENTAL: Until the Supreme Court of New Jersey
passes on defendant's petition for cer-
tification.

I hereby certify that the foregoing is a true copy of the
original on file in my office.

ELIZABETH McLAUGHLIN
Clerk

FOR THE COURT:
(Illegible)

P.J.A.D.

WITNESS, THE HONORABLE ROBERT A. MATTHEWS, PRE-
SIDING JUDGE OF PART G, SUPERIOR COURT OF NEW JERSEY,
APPELLATE DIVISION, THIS 21 DAY OF DECEMBER 1978.

ELIZABETH McLAUGHLIN
CLERK OF THE APPELLATE DIVISION

ORIGINAL FILED
DEC 21 1978
ELIZABETH McLAUGHLIN
Clerk

(64450)